

WRIT PETITION NO. 2072 OF 2015
WITH
CHAMBER SUMMONS NO. 87 OF 2016

Car Mart Private Limited and Anr.	}	Petitioner
versus		
Bombay Mercantile Bank	}	Respondent

Mr. Prathamesh Kamat with Ms. Sapna
Rachure i/b. M/s. T. N. Tripathi and Co. for
the respondent.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- APRIL 15, 2016

P.C. :-

1) This petition under Article 226 of the Constitution of India challenges an order passed on 9th June, 2015 passed by the sole arbitrator on an application styled as application for amendment. The operative part of the order at page 245 of the paper book reads as under:-

“ORDER

The Applicant Bank is hereby directed to replace the photo-copy of the Dispute Application returned by the Co.op. Court Mumbai and to file afresh Dispute Application of the same claim with necessary amendments as required for, with copy to the Respondents, within 2 weeks from the date of this order subject to cost of Rs.15,000/- payable today itself. In default this order will automatically stand vacated.”

2) Mr. Kamat learned counsel appearing for the respondent bank raised a preliminary objection to the maintainability of the writ petition and in that regard, invites our attention to the two provisions. In the Multi State Co-operative Societies Act, 2002, falling under Chapter IX titled as “Settlement of Disputes”, Mr. Kamat relies upon section 84 to submit that it falls under this chapter and by sub-section (5) it provides that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations under the Multi State Co-operative Societies Act, 2002 as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

3) Mr. Kamat relies upon section 16 of the Arbitration and Conciliation Act, 1996 to submit that even that Act and which contains the provision enabling the parties to raise issue of jurisdiction of arbitral tribunal 16 allows the tribunal to rule on jurisdiction. If the tribunal is competent to rule on jurisdiction and such ruling is not made subject matter of any challenge under the Act and adverse ruling does not halt the arbitration proceedings but allows the tribunal to go through the same until making of an award, then, Mr. Kamat would submit that intervening at this stage in the writ jurisdiction would mean that

the provisions, namely, sub-sections (5) and (6) of section 16 of the Arbitration and Conciliation Act, 1996 and sub-section (5) of section 84 of the Multi State Co-operative Societies Act, 2002 are rendered nugatory. They would be given a complete go by.

4) We have also heard Mr. Thakkar learned senior counsel appearing for the petitioners on this preliminary objection and he would submit that given the nature of the challenge, this bar would not be attracted. He would submit that initially the respondent bank approached the Co-operative Court by filing a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960. That was not pursued because of ground of jurisdiction raised and that ground being upheld. That resulted in returning of the dispute for presentation to proper court or authority. The bank did nothing and for a prolonged period. It abruptly and suddenly filed what is stated to be a photo-copy of the dispute instituted in the Co-operative Court and desired the arbitrator to commence proceedings. Once that was objected to, then, an application seeking amendment was filed. However, the application would indicate that it was not to correct any errors or add any pleadings in an existing claim petition or otherwise, but to seek filing of a fresh claim petition itself. It is such an application which has been granted in the garb of

permitting amendment. That is impermissible in law. Mr.Thakkar, therefore, would submit that the writ petition be entertained.

5) We have heard parties at some length on the preliminary objection raised by Mr. Kamat. We have carefully perused both the provisions. Section 84 of the Multi State Co-operative Societies Act, 2002 admittedly falls under Chapter IX titled as "Settlement of Disputes". It gives an overriding effect to the Act and if there is any dispute other than a service dispute or an industrial matter, touching the constitution, management or business of the Multi State Co-operative Society and between the parties specified therein, then, it shall be referred to arbitration. Sub-section (2) of section 84 makes certain disputes deemed to be the disputes touching the constitution, management or business of the Multi State Co-operative Societies. Then by sub-section (3), it gives a finality to the decision of the arbitrator on whether the dispute referred for arbitration is or is not dispute touching the constitution, management or business of the Multi State Co-operative Society. By sub-section (4), an appointment of the arbitrator is indicated and which is to be made by the Central Registrar. Sub-section (5) of section 84 of the Multi State Co-operative Societies Act, 2002 reads as under:-

“84(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.”

6) Thus, a perusal of this section would indicate that what is provided as a mode of settlement of dispute is a arbitration. However, by other provisions in the various sub-sections of section 84 itself, the legislature in no uncertain terms says that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to the arbitration under the Act, namely, the Multi State Co-operative Societies Act, 2002 as if the arbitration proceedings were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

7) Thus, we find that by sub-section (5) of section 84 of the Multi State Co-operative Societies Act, 2002, the Arbitration and Conciliation Act, 1996 is made applicable to the arbitration under the Multi State Co-operative Societies Act, 2002. Even if there is an challenge raised to the jurisdiction of the arbitral tribunal as provided under the Arbitration and Conciliation Act, 1996 and by section 16 thereof, the arbitral tribunal is competent to rule on the same. It can rule on its own jurisdiction including ruling on any objection with respect to the existence or validity of the arbitration agreement and then indicates as to how the party

can raise that issue and at what stage. By sub-section (3) the arbitral tribunal can also rule on a plea that it is exceeding the scope of its authority. This also can be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Thus, by sub-section (5) of section 16 The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award. By sub-section (6) of section 16, while challenging such an award, the party aggrieved can raise all contentions.

8) We understand the scope of the present challenge to be one covered by the Arbitration and Conciliation Act, 1996 and particularly the provisions referred above. Meaning thereby, the present petitioner can raise all contentions in the event the arbitral award is adverse to it, that the arbitral tribunal was not empowered to take cognizance of what is styled as photo-copy of the dispute application or that in the garb of allowing such a photo-copy to be tendered at the initial stage or by granting amendment in the above form substituting it with the new claim petition, it has exceeded its authority. We permit the petitioners to raise such contentions in the event the arbitral award is

adverse to them and if the petitioners take recourse to section 34 of the Arbitration and Conciliation Act, 2002 in challenging such arbitral award. That provision can be invoked because the Multi State Co-operative Societies Act, 2002 permits such invocation.

9) While upholding the preliminary objection of the respondent raised by Mr. Kamat, we dispose of the petition with the above clarifications. We also clarify that this court has not ruled upon any contentions. Both sides can place their version with regard to the above matters and also on merits before the competent authorities and courts.

10) The writ petition is disposed of. Needless to clarify that once the arbitration partakes the character of arbitration under the Arbitration and Conciliation Act, 1996, the arbitrator must follow the course that is provided for in the Arbitration and Conciliation Act, 1996.

11) In the light of the disposal of the writ petition, the chamber summons does not survive and stands disposed of as such.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)